

**Written Testimony of
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U.S. Section, International Joint Commission
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Chairman Miller, I appreciate the opportunity to appear before your subcommittee and I commend you for convening this session at a high school. Because you are exactly right, the key to being a good steward of the Great Lakes is a great education. What students learn today will be reflected in healthier, better managed, more sustainable lakes tomorrow.

I also commend you for your leadership on many critical issues confronting the Great Lakes. From invasive species to toxic spills, to erosion in the St. Clair River, you have been a staunch defender of the Great Lakes, and your work is much appreciated.

As I begin, I should note that my comments this afternoon are my personal views as a conservationist who grew up on Saginaw Bay and has worked on Great Lakes issues for the past 25 years. They do not necessarily represent the views of the International Joint Commission.

The challenge of closing the Great Lakes to invasive species while keeping them open for commerce is being addressed at local, state, federal and international levels with varying prospects for success. There certainly is a role for each level of government, for individuals and for industry in the battle to stop the inflow of invaders that threaten our lakes.

Today, we have heard and will be hearing of ongoing efforts to stop the import of invasive species via the ballast water discharges from ocean-going ships. Like others here today, however, I am increasingly frustrated at the slow pace of progress to reduce the risk of invasion and thereby protect the Great Lakes.

Aquatic invasive species are the number one threat to the biosecurity of the Great Lakes, and it's time for everyone who cares about the lakes to stand up, speak out, and with one voice tell Washington – do something and do it now!

What is it that we should ask Washington to do? To me, it is obvious that Congressional action and oversight are required to speed up the process, to cut through the confusion of competing approaches, to set a clear, protective discharge standard, and to set clear lines of authority and responsibility.

If we learned one thing in the wake of Hurricane Katrina, it is that solving problems becomes exponentially harder when multiple agencies are in charge or think they are in charge. The result? Everybody and nobody are in charge. Conversely, seemingly intractable problems can be successfully tackled when authority, resources and responsibility are focused in one agency. In the case of aquatic invasive species, that agency is and should be the United States Coast Guard.

I Our goal of keeping the Great Lakes closed to invasion but open to commerce is being pursued along several regulatory pathways at the international, national and subnational levels. These treaty-based, administrative and legislative pathways have been described in previous testimony.

With each of these regulatory pathways, the key step is setting a ballast water discharge standard. Setting a successful standard requires the following basic elements:

- First and foremost, the standard must be biologically protective of the Great Lakes. It has to work.
- Second, it must be enforceable, meaning the test to meet the standard must be quick, simple and without ambiguity.
- Third, it must be fairly applied to all ships.
- Fourth, it must be achievable either by technology or management practice or combination thereof.
- Lastly, but of no less importance, the standard must be coordinated with Canada to allow for maximum protection of the lakes and maximum opportunities for cooperative testing and efficient enforcement. Ideally, the standard should be the same because invasive species recognize no boundaries.

Much time has passed already and the Great Lakes have waited long enough for action, but nevertheless, there must be a fair, but clear schedule for implementation so that shippers are able to comply. In the interim, however, there must be intermediate management steps to reduce the risk of AIS introductions.

Earlier, Commander Moore described the current regulatory pathway under the 1996 National Invasive Species Act. This act gives the Coast Guard the authority to develop regulations and guidelines to prevent the introduction of invasive species via ballast water discharges. These regulations require ballast water exchange for all ballasted vessels. The standard is salinity – 30 parts per thousand, the same as seawater.

However, when inbound ships declare “no ballast on board” they are exempt. To address this exception, the Coast Guard’s recent action to establish an additional, voluntary best management practice that recommends vessels declaring NOBOB to conduct a saltwater flush outside the U.S. EEZ is a step in the right direction. Just as important will be additional monitoring to see whether ships are achieving the 30 ppt salinity standard in residual ballast water.

This is vitally important because as we heard from Steve Brandt, NOAA’s seminal NOBOB report concluded that:

“We assign the greatest risk to NOBOB vessels that enter the Great Lakes containing fresh or low-salinity residual ballast water and urge that methods to eliminate this risk be developed as soon as possible.”

It appears that the Coast Guard is paying attention and is putting this advice to work.

Moreover, the Coast Guard should be commended for their work leading the negotiations resulting in the 2004 ballast water convention of the International Maritime Organization – a branch of the United Nations. However, despite the insistence of Coast Guard negotiators, the standard the IMO adopted is weaker than what the U.S. wanted and has been questioned by many experts as not being fully protective of the Great Lakes.

What's important to note is that U.S. negotiators did succeed in making sure the convention allows member nations to implement tougher standards to protect sensitive areas like the Great Lakes. And I fully expect that the Coast Guard will implement a standard that will be tougher and more protective than the standard adopted by the IMO.

But this path raises possible concerns – the timeline is long and uncertain, the standard remains to be set, and the Coast Guard does not have clear cut regulatory authority that would be afforded by a discharge standard written in law. The quickest, clearest most direct route to protecting the Great Lakes is for Congress to set a standard and to set it now.

There are at two pieces of pending legislation that would accomplish this goal – the proposed National Aquatic Invasive Species Act of 2005 (S.770) and the Ballast Water Management Act of 2005 (S.363).

Another regulatory path has been imposed by a federal district court in San Francisco. There, a judge has determined that ballast water is subject to regulation under the federal Clean Water Act. Her ruling creates confusion and uncertainty that I fear will actually delay progress toward protecting the lakes. For example,

- It would put a different agency with no experience or authority with ships – the USEPA – in charge.
- For the first time, it would impose a permitting program designed for fixed sources of water pollution on mobile ones.
- The Clean Water Act allows for states to set their own different standards, creating the potential for a patchwork quilt of regulations.
- It would subject international commerce to individual state action.
- And appeals of this decision will delay action as will potential citizen lawsuits.

Congress must clear up this confusion – put the Coast Guard in charge and set a standard. It's that simple.

These actions would position the U.S. as a world leader in the protection of its waters – most specifically the Great Lakes. However, the Great Lakes are a shared resource, so to be most effective and fully protective of the lakes, these actions must be coordinated with Canada.

Here, I should note that Canada is in the process of adopting regulations that roughly conform with existing U.S. regulations requiring mandatory ballast water exchange. Similar to the U.S. path, the timeline is long and it isn't clear when ballast water exchange will sunset and treatment will become mandatory. Moreover, while the new Canadian regulations cover NOBOBs, it is not clear how the rule will be enforced and there have been concerns expressed

by the U.S. over the identification of alternative discharge zones in coastal areas in which ballast water exchange would be allowed.

That's just a very complicated way of saying that the details of how the program would actually work have yet to be determined. Frankly, I think this gives the two countries the perfect opportunity to examine their policies as part of the review of the Great Lakes Water Quality Agreement. The review process will allow the two parties to step back from the day to day needs of managing programs to develop a harmonized, coordinated approach based on a single standard. To me, if a new Great Lakes Water Quality Agreement achieves a common strategy on aquatic invasive species, it will be a resounding success.

Finally, the subcommittee should also be aware of other ways to stop the discharge of untreated ballast water in the Great Lakes. An example is the transshipment of goods from ocean vessels to Lakers, prior to their entry into the Great Lakes. Goods that could not be transshipped to vessels might be moved to trucks and railroad lines. In this regard, a recent study by Dr. John Taylor of Grand Valley State University revealed that the estimated additional cost of this option would be roughly \$55 million annually, an amount far less than the annual cost to the water and power industry attributed to invasive species.

I mention this alternative because this study sets a benchmark for the cost of any regulation this Congress or the Coast Guard might adopt. If regulatory compliance costs are greater than \$55 million per year, then transportation modes may shift. Congress and regulators must be aware of such impacts so that they can be fully informed and prepared to make the decisions needed to protect both the economy and the ecology of the Great Lakes.

Finally, thank you again for the opportunity to express my views, and I look forward to answering your questions.